

to hire and fire employees and to appoint members to boards of directors or management committees.

(c) *Records Maintenance.* All winning bidders qualifying as small businesses, shall maintain at their principal place of business an updated file of ownership, revenue and asset information, including any documents necessary to establish eligibility as a small business and/or consortium of small businesses under § 90.814. Licensees (and their successors in interest) shall maintain such files for the term of the license.

(d) *Audits.* (1) Applicants and licensees claiming eligibility as a small business or consortium of small businesses under §§ 90.810 through 90.812 shall be subject to audits by the Commission, using in-house and contract resources. Selection for audit may be random, on information, or on the basis of other factors.

(2) Consent to such audits is part of the certification included in the short-form application (Form 175). Such consent shall include consent to the audit of the applicant's or licensee's books, documents and other material (including accounting procedures and practices) regardless of form or type, sufficient to confirm that such applicant's or licensee's representations are, and remain, accurate. Such consent shall include inspection at all reasonable times of the facilities, or parts thereof, engaged in providing and transacting business, or keeping records regarding licensed 900 MHz SMR service and shall also include consent to the interview of principals, employees, customers and suppliers of the applicant or licensee.

(e) *Definitions.* The terms *affiliate, business owned by members of minority groups and/or women, consortium of small businesses, gross revenues, members of minority groups, nonattributable equity, small business* and *total assets* used in this section are defined in § 90.814.

§ 90.816 Criteria for comparative 900 MHz SMR renewal proceedings.

(a) *Ultimate issue.* The ultimate issue in comparative renewal proceedings will be to determine, in light of the evidence adduced in the proceeding, what disposition of the applications

would best serve the public interest, convenience and necessity.

(b) *Renewal expectancies.* The most important comparative factor to be considered in a comparative 900 MHz SMR renewal proceeding is a major preference, commonly referred to as a "renewal expectancy".

(1) The 900 MHz SMR renewal applicant involved in a comparative renewal proceeding will receive a renewal expectancy, if its past record for the relevant license period demonstrates that:

(i) The renewal applicant has provided "substantial" service during its past license term. "Substantial" service is defined as service which is sound, favorable, and substantially above a level of mediocre service which just might minimally warrant renewal; and

(ii) The renewal applicant has substantially complied with applicable FCC rules, policies and the Communications Act of 1934, as amended.

(2) In order to establish its right to a renewal expectancy, a 900 MHz renewal applicant involved in a comparative renewal proceeding must submit a showing explaining why it should receive a renewal expectancy. At a minimum, this showing must include:

(i) A description of its current service in terms of geographic coverage and population served;

(ii) An explanation of its record of expansion, including a timetable of the construction of new base sites to meet changes in demand for SMR service;

(iii) A description of its investments in its 900 MHz SMR system; and

(iv) Copies of all FCC orders finding the licensee to have violated the Communications Act or any FCC rule or policy; and a list of any pending proceedings that relate to any matter described in paragraph (b)(2) of this section.

(3) In making its showing of entitlement to a renewal expectancy, a renewal applicant may claim credit for any system modification applications that were pending on the date it filed its renewal application. Such credit will not be allowed if the modification application is dismissed or denied.

[60 FR 55485, Nov. 1, 1995]

Subpart V—Competitive Bidding Procedures for 800 MHz Specialized Mobile Radio Service

SOURCE: 61 FR 6159, Feb. 16, 1996, unless otherwise noted.

§ 90.901 800 MHz SMR spectrum subject to competitive bidding.

Mutually exclusive initial applications for Spectrum Blocks A, B, and C in the 800 MHz band are subject to competitive bidding procedures. The general competitive bidding procedures provided in part 1, subpart Q of this chapter will apply unless otherwise indicated in this subpart.

§ 90.902 Competitive bidding design for 800 MHz SMR licensing.

The Commission will employ a simultaneous multiple round auction design when selecting from among mutually exclusive initial applications for EA licenses for Spectrum Blocks A, B, and C in the 800 MHz band, unless otherwise specified by the Wireless Telecommunications Bureau before the auction.

§ 90.903 Competitive bidding mechanisms.

(a) *Sequencing.* The Wireless Telecommunications Bureau will establish and may vary the sequence in which 800 MHz SMR licenses for Spectrum Blocks A, B, and C will be auctioned.

(b) *Grouping.* All EA licenses for Spectrum Blocks A, B, and C will be auctioned simultaneously, unless the Wireless Telecommunications Bureau announces, by Public Notice prior to the auction, an alternative competitive bidding design.

(c) *Minimum bid increments.* The Wireless Telecommunications Bureau will, by announcement before or during an auction, require minimum bid increments in dollar or percentage terms.

(d) *Stopping rules.* The Wireless Telecommunications Bureau will establish stopping rules before or during the multiple round auctions in order to terminate an auction within a reasonable time.

(e) *Activity rules.* The Wireless Telecommunications Bureau will establish activity rules which require a minimum amount of bidding activity. In the event that the Commission estab-

lishes an activity rule in connection with a simultaneous multiple round auction, each bidder will be entitled to request and will be automatically granted a certain number of waivers of such rule during the auction.

§ 90.904 Aggregation of EA licenses for spectrum blocks A, B, and C.

The Commission will license each Spectrum Block A, B, and C in the 800 MHz band separately. Applicants may aggregate across spectrum blocks within the limitations specified in § 20.6 of this chapter.

§ 90.905 Withdrawal, default and disqualification payments.

(a) During the course of an auction conducted pursuant to § 90.902, the Commission will impose payments on bidders who withdraw high bids during the course of an auction, who default on payments due after an auction closes, or who are disqualified.

(b) *Bid withdrawal prior to close of auction.* A bidder who withdraws a high bid during the course of an auction will be subject to a payment equal to the difference between the amount bid and the amount of the winning bid the next time the license is offered by the Commission. No withdrawal payment would be assessed if the subsequent winning bid exceeds the withdrawn bid. This payment amount will be deducted from any upfront payments or down payments that the withdrawing bidder has deposited with the Commission.

(c) *Default or disqualification after close of auction.* If a high bidder defaults or is disqualified after the close of such an auction, the defaulting bidder will be subject to the payment in paragraph (b) of this section plus an additional monetary assessment equal to three (3) percent of the subsequent winning bid. If the subsequent winning bid exceeds the defaulting bidder's bid amount, the 3 percent payment will be calculated based on the defaulting bidder's bid amount. These amounts will be deducted from any upfront payments or down payments that the defaulting or disqualified bidder has deposited with the Commission. If the default occurs within five (5) business days after the bidding has closed, the Commission retains the discretion to